

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08CV390-1-MU

RICARDO DARNELL JONES,)
)
Plaintiff,)
)
v.)
)
BUNCOMBE COUNTY SHERIFF, et al.,)
)
Defendants.)
)

ORDER

THIS MATTER comes before the Court on its own motion.

On August 19, 2008, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 which initiated the instant case. In conjunction with filing his Complaint Plaintiff filed a Motion to Proceed In Forma Pauperis.

Section 1915 of Title 28 of the United States Code allows certain litigants to pursue civil litigation without the prepayment of fees or costs. 28 U.S.C. § 1915(a)(2). However, pursuant to 28 U.S.C. § 1915(g), “in no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has without the prepayment of fees or costs if the prisoner has, on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim. The only exception to this filing prohibition is if the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

It has just come to the Court's attention that Plaintiff has filed at least three prior Complaints pursuant to 42 U.S.C. § 1983 that have been dismissed for failure to state a claim or for frivolousness. (4:96CV252; 1:06CV96; 1:06CV99). Plaintiff's Complaint does not establish that he is in imminent danger of serious physical injury. See Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003) ("[v]ague, speculative, or conclusory allegations are insufficient to invoke the exception of § 1915(g); rather the inmate must make :specific fact allegations of ongoing serious physical injury, or a pattern of misconduct evidencing the likelihood of imminent serious physical injury.") Consequently, because Plaintiff, a prisoner, has three "strikes" against him, he is not entitled to proceed as a pauper and his Complaint is dismissed pursuant to 28 U.S.C. § 1915(g).

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Complaint is **DISMISSED** without prejudice to Plaintiff's right to pay the filing fee and refile this action;
2. The Court vacates its March 3, 2009 Order (Doc. No. 87) directing that copies of Plaintiff's medical records and documents relating to the incident in question be sent to the Court and to Plaintiff; and
3. Plaintiff's remaining motions (Doc. Nos. 66, 74, 81, 82, 86 and 88) are dismissed as moot .

Signed: April 1, 2009



Graham C. Mullen
United States District Judge



